

401 Congress Avenue  
Suite 2100  
Austin, Texas 78701

512.370.2800 OFFICE  
512.370.2850 FAX  
winstead.com

direct dial: 512.370.2806  
aaxe@winstead.com

January 15, 2010

***Via Certified Mail Return Receipt Requested and Email***

Mr. Stephen Tzhone, Remedial Project Manager  
U.S. Environmental Protection Agency, Region 6  
Superfund Division (6SF-RA)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Ms. Barbara A. Nann, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 6  
Superfund Division (6RC-S)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

***Re: Unilateral Administrative Order for Remedial Investigation/Feasibility Study ("UAO")  
San Jacinto River Waste Pits Site (the "Site") – Update Regarding Respondents' Efforts  
to Obtain Access Agreements, Response to Letter from Ms. Barbara Nann, United  
States Environmental Protection Agency ("EPA") dated January 12, 2010 ("January 12  
Letter") and Request for Extension***

---

Dear Stephen and Barbara:

This letter is being submitted jointly on behalf of International Paper Company ("IPC") and McGinnes Industrial Maintenance Corporation ("MIMC"), as Respondents under the above-referenced UAO. It serves as a follow-up to the letter dated December 18, 2009 (the "Best Efforts Letter"), sent to EPA Region 6 on behalf of Respondents, that described Respondents' efforts as of that date to obtain access to the Site. As requested during a call with Ms. Nann on January 8, 2010 (the "January 8 Call"), this letter documents in greater detail efforts made to obtain access as described in the Best Efforts Letter. It also describes Respondents' subsequent and ongoing efforts to obtain access necessary to perform the remedial investigation required by the UAO. Moreover, this letter responds to the January 12 Letter including EPA's determination in that Letter that Respondents "did not use 'best efforts' in attempting to secure access to property in order to conduct activities required under the UAO."

January 12 Letter at 1.<sup>1</sup> Respondents dispute EPA's determination, which is not based on all of the information provided to EPA regarding access efforts prior to the issuance of the January 12 Letter and which fails to recognize the substantial efforts made by Respondents to obtain access after December 4, 2009, when each of them notified EPA that they intended to comply with the UAO.

Paragraph 82 of the UAO provides in relevant part that Respondents:

" . . . shall obtain, or use their best efforts to obtain, access agreements from the present owner(s) within thirty (30) days of the EFFECTIVE DATE of this Order. Such agreements shall provide access for EPA and their contractors and oversight officials, and the Respondents or their authorized representatives with respect to liability associated with Site activities. . . . If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of their failure to obtain access."

The UAO, as you know, was issued on November 20, 2009, and provided that Respondents had until Friday, December 4, 2009, to notify EPA whether they intended to comply with the UAO. Each of the Respondents notified EPA on December 4, 2009 that it intended to comply with the UAO, subject to certain objections and sufficient cause defenses (collectively, "Sufficient Cause Defenses"). The UAO, however, was made effective as of the date of issuance, November 20, 2009, 14 days before the "intent to comply" deadline. UAO, Section XXVI, paragraph 103. As set forth in Respondents' Sufficient Cause Defenses, making the UAO effective upon issuance was contrary to EPA's guidance, which requires that "[g]enerally, the 'effective date and computation of time' provision of a unilateral order . . . should provide that the order is effective on a date that follows the opportunity for a conference and that all times for performance of ordered activities shall be calculated from this effective date."<sup>2</sup> With respect to efforts to obtain access, the effect of EPA's action was to effectively shorten the 30-day period under Paragraph 82 to the ten (10) business days (from December 7, 2009 to December 18, 2009) that followed the deadline for Respondents to notify EPA whether they intended to comply with the UAO.<sup>3</sup>

Any alleged shortcoming in Respondents' efforts to obtain access also must be considered in the context of the discussions about access efforts that took place during the

---

<sup>1</sup> As addressed below, EPA issued the January 12 Letter as Respondents were preparing to submit to Ms. Nann a letter further describing the scope of their efforts to obtain access. Much of that additional information, however, was provided to Ms. Nann during the January 8 Call, but is not referenced in the January 12 Letter.

<sup>2</sup> Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions dated March 7, 1990 (OSWER Directive No. 9833 0-1a).

<sup>3</sup> Even if the entire 30-day period is considered, the UAO was issued on the Friday prior to the Thanksgiving holiday, meaning that the 30-day period contained only 18 or 19 business days, three of them falling during Thanksgiving week. During this same 30-day period, there were a number of steps that Respondents took to comply with the UAO and to address EPA's request that they enter into a site stabilization administrative order on consent, a draft of which EPA also provided to them on November 20<sup>th</sup>. Those steps are described below in this letter.

December 3, 2009 meeting at EPA's offices regarding the UAO (the "UAO Conference"). The UAO Conference took place one day prior to the deadline for Respondents to notify EPA whether they intended to comply with the UAO. As reflected in EPA's Amended UAO Conference Summary ("Summary"), a copy of which is enclosed with this letter and marked as Exhibit 1, the issue of access was discussed, with Respondents' representatives describing their plans to send letters to those whose consent for access was required. Summary at 4-5. At the UAO Conference, EPA's representatives requested that contact information for them be included in letters asking for access (*Id.*), a request that Respondents honored. The steps that Respondents took to obtain access, as described in the Best Efforts Letter and further explained below, were consistent with the course of action discussed during the UAO Conference.

The Summary confirms EPA's agreement to extend the UAO's deadline for Respondents to submit an RI/FS work plan from January 18, 2010 to March 1, 2010. Summary at 2. Any on-Site work requiring access under the UAO thus would not occur until after the RI/FS work plan had been submitted on March 1, 2010 and approved by EPA. The Summary also documents the range of other issues that Respondents, upon agreeing to comply with the UAO, undertook to address during the same time period during which they were to use "best efforts" to obtain access. During the 30-day period following issuance of the UAO, Respondents participated in the UAO Conference (on December 3), submitted their "intent to comply" letters to EPA (on December 4), selected and designated a Project Coordinator (by December 4), selected and notified EPA of the identity of contractor(s) that would perform work required by the UAO, participated in a "scoping meeting" (on December 7), met with Harris County officials (on December 9), conducted a telephonic meeting with Ms. Nann regarding the provisions of the proposed administrative order on consent ("AOC") for a removal action (on December 10), prepared a monthly report in accordance with the UAO (by December 15), participated in a telephone conference with Harris County officials and other parties regarding community awareness (on December 16), prepared a site health and safety plan and quality management plan (submitted to EPA on December 21), and also began developing interim site stabilization measures, the RI/FS work plan (due March 1, 2010), and a scope of work for the removal action required by the proposed AOC (to be submitted to EPA, as agreed at the UAO Conference, by January 29, 2010).

Following the UAO Conference, and as detailed in the Best Efforts Letter, letters were sent to each of the individuals or companies required to provide consent for access. Thus, letters were sent to the Port of Houston Authority ("PHA"), to the five individuals who had been identified as heirs (or heirs of now-deceased heirs) of Virgil C. McGinnes (the "McGinnes Heirs"), and to Big Star Barge and Boat Company ("Big Star"). Enclosed with each of the letters was a proposed access agreement. Copies of the letters and the accompanying access agreements were then sent by email to each of you on December 7, 2009. Copies of these letters were also attached to the Best Efforts Letter. In order to identify and locate McGinnes Heirs, MIMC's counsel had previously devoted a significant amount of time over a period of weeks to obtaining and reviewing probate records, identifying heirs of now-deceased heirs and otherwise sorting out whose consent to access might be needed, efforts which are described in more detail below.

After sending out the letters, I was contacted by Jay Roberts, the president of Big Star, who told me he would not sign an access agreement unless EPA was a party to the agreement and also requested a number of other changes to the proposed agreement. Ms. Nann was promptly notified of Big Star's request via an email sent on December 14, 2009, a copy of which

is attached and marked as Exhibit 2. As of four days later, when Respondents reported on their efforts to obtain access, EPA understandably had not yet responded to the email.<sup>4</sup> As to Big Star, the December 18 Letter therefore noted that Respondents were in the process of responding to Big Star's concerns about the access agreement. We also received a response (in the form of a letter) from PHA, consenting to access, a copy of which was provided to EPA with the Best Efforts Letter. As to the McGinnes Heirs, after allowing a few days for them to receive and then review the letters each had been sent, Respondents contacted (or attempted to contact) each of them during the week of December 14th. As a result of those contacts, we learned that three of the McGinnes Heirs were represented by counsel, Lori Warner of Adams & Reese. Ms. Warner in turn advised us that she would not be prepared to discuss details of the access agreement until after the first of the new year. One of the other McGinnes Heirs notified us that her attorney would be contacting us, and the fifth, despite diligent efforts, could not be contacted. These efforts were documented in the Best Effort Letter.

The January 12 Letter characterizes the Best Efforts Letter as describing the totality of Respondents' efforts to obtain access (January 12 Letter at 1 and 2), notwithstanding that (1) Ms. Nann was provided with specific additional details about Respondents' access efforts during the January 8 Call, and (2) Respondents were in the process of documenting that additional information to provide to EPA when the January 12 Letter was received. In addition, the Best Efforts Letter specifically provided that its intent was to notify EPA of the status of continuing efforts to obtain access, as required by the UAO, and was not intended to express (nor did it express) any intention on the part of Respondents to halt their efforts to obtain access. Rather, the Best Efforts Letter specifically stated that MIMC and IPC had used and would continue to use their best efforts to obtain the necessary access agreements. December 18 Letter at 5 ("While we have not yet finalized an agreement with Big Star or any of the McGinnes Heirs, MIMC and IPC have used their 'best efforts' to obtain such agreements and will continue to do so.") (emphasis added).

The first notice to Respondents that EPA had concerns regarding their access efforts was a brief mention of the issue in a telephone call to Ms. Nann on Monday, January 4, 2010 (the purpose of which was to seek direction from Ms. Nann as to how she wished to proceed regarding a newly-proposed administrative order on consent for interim site stabilization measures that technical representatives for Respondents and EPA had been discussing) and then in a call later that week, the January 8 Call, that Ms. Nann requested specifically to address access issues.

During the January 8 Call and in the January 12 Letter, Ms. Nann identified various actions that Respondents purportedly should have taken prior to the submission of the Best Efforts Letter as the basis for EPA's determination that Respondents have failed to meet their "best efforts" obligation under the UAO. The discussion below responds to those assertions and also provides additional information about the steps taken by Respondents, both prior to and subsequent to the submission of the Best Efforts Letter, to obtain access.

---

<sup>4</sup> As addressed below, EPA did not respond regarding whether it would be a party to the agreement until the January 8 Call.

In addition, the January 12 Letter describes specific steps that "Respondents will need to demonstrate in order to be in compliance with the UAO." January 12 Letter at 3. These steps are:

endless attempts to establish communication, flexibility in the form of communications with owners (communication in person, phone fax or email), continued communication with owners or their counsel to obtain access, exploration of issues raised by owners including liability and ownership, demonstrated negotiation or alteration of access agreements to address owners concerns, exploration of the reasons of any refusal to provide access to ascertain whether the refusal can be overcome, and monetary compensation if required to secure access.

*Id.* at 2-3.

No guidance or other authority is cited as the basis for the conclusion that these specific actions were (or are) required to demonstrate "best efforts." The January 12 Letter does not demonstrate how efforts of the kind specifically set forth in it would have resulted in Respondents obtaining access. For example, once the three McGinnes Heirs retained counsel and that counsel told Respondents that she would not be prepared to discuss the specifics of the access agreement until after the upcoming Christmas/New Year holiday, how could "endless" contacts with counsel have changed the situation? The record of Respondents' efforts to obtain access, summarized below and in the Best Efforts Letter, amply documents that Respondents have and continue to demonstrate diligence in seeking access and have satisfied their "best efforts" obligations under the UAO.<sup>5</sup> The discussion below separately addresses efforts involving the PHA, the McGinnes Heirs and Big Star in turn.

#### **I. PHA**

As discussed in the Best Efforts Letter, the PHA provided a letter dated December 16, 2009 responding to Respondents' request for access, in which the PHA stated that it "does not object to entry onto the Site." A copy of PHA's letter was forwarded to EPA with the Best Efforts Letter. Based on statements made by Ms. Nann during the January 8 Call and in the January 12 Letter, we understand the PHA's letter to satisfy EPA's requirement for consent to access

---

<sup>5</sup> It is noteworthy that EPA has entered into numerous administrative settlement agreements in which it has described "best efforts" as an initial visit, a follow-up telephone call and a certified letter to the present owner of the property requesting an access agreement. See, e.g., *In the Matter of: Former Manufactured Gas Plant Site Beatrice*, Administrative Settlement Agreement and Order on Consent, CERCLA-07-2006-0109 (July 20, 2007), Section IX, Paragraph 35; *In the Matter of: Delfasco, Inc.*, RCRA § 7003 Unilateral Administrative Order, RCRA-06-2008-0907 (July 2, 2008) ("Best efforts . . . shall include, at a minimum, a certified letter to the present owner of such property requesting access . . ."), Section XIII, Paragraph 61; and *In the Matter of: Iowa Nebraska Light & Power Site*, Administrative Settlement Agreement and Order on Consent, CERCLA-07-2006-0159 (April 13, 2007) ("best efforts" shall include an initial visit, a follow-up telephone call and a certified letter . . . to the present owner of the property, requesting an access agreement . . ."), Section IX, Paragraph 42.

and Respondents' efforts in obtaining access to have satisfied the requirements of the UAO. If our understanding is incorrect, please notify us as soon as possible.

## **II. McGinnes Heirs**

As EPA is well aware, obtaining access to the main portion of the Site has been complicated by uncertainty regarding the record ownership of the Site property and the need to seek access agreements from the McGinnes Heirs. In several instances, Mr. McGinnes' direct heirs in turn had died, and the heirs' heirs had to be identified and contact information for them located. Heirs of Mrs. McGinnes also had to be identified since the Site property was community property under Texas law. Respondents' efforts in that regard were documented in the Best Efforts Letter.

EPA's determination that Respondents failed to use "best efforts" to obtain access from the McGinnes Heirs appears to be largely based on Respondents' purported failure to contact the McGinnes Heirs. During the January 8 Call, Ms. Nann stated that Respondents should have attempted to call each of the McGinnes Heirs every day or to knock on the doors of their homes. The January 12 Letter states that "endless attempts to establish communications" were required to demonstrate "best efforts." January 12 Letter at 2.

As described below, Respondents diligently pursued contact with the McGinnes Heirs, and certain efforts of the kind EPA seeks to characterize as necessary to demonstrate "best efforts" would have been inappropriate (particularly during the holiday season, when contacting the McGinnes Heirs on a daily basis might well have been perceived by them to be harassment). In this regard, three of the Heirs had engaged counsel, who had in turn advised Respondents she was not a position to discuss access until the first of the year. The reasonableness of Respondents' efforts above must be weighed against the fact that access for purposes of the UAO, was not necessary until after EPA had received the RI/FS work plan (due on March 1, 2010) and approved it.<sup>6</sup> The record regarding contact with the McGinnes Heirs is as follows:

- On Monday, December 7, 2009 (the first business day after Respondents notified EPA that they intended to comply with the UAO), a letter was sent to each of the McGinnes Heirs. The letters were sent via certified mail.
- After providing the McGinnes Heirs a few days to receive and then review and analyze the information provided in the letters, Respondents began contacting the McGinnes Heirs by telephone. These efforts began on Tuesday, December 15, 2009, and continued on a daily basis that week. Each McGinnes Heir contacted by telephone stated that he or she wanted to discuss the matter with an attorney and, acknowledging the impending deadline, would contact us soon.
- On December 18, 2009, and as discussed in the Best Efforts Letter, we were contacted by Ms. Lori Warner of the law firm of Adams & Reese, who stated that

---

<sup>6</sup> Respondents recognize that if they are to enter into an AOC with EPA for interim site stabilization activities, access to the Site will be required sooner than access will be needed under the UAO. But for purposes of assessing whether Respondents' efforts were reasonable and sufficient under the UAO, the need for earlier access for other activities is irrelevant.

she represented three of the McGinnes Heirs.<sup>7</sup> Ms. Warner advised us that certain conflict issues had to be resolved regarding her representation of the three Heirs, and that she would not be prepared to discuss the access issue until after the beginning of the new year. Once we were contacted by Ms. Warner, any subsequent, additional attempts to contact the represented Heirs she was representing would have been improper, given that they were represented by counsel. Once we were contacted by Ms. Warner, it became apparent that an access agreement acceptable to the three represented Heirs needed to be worked out and then provided to the remaining Heirs (who Respondents nonetheless, as described below, continued to attempt to contact and to determine if they had retained counsel).

- A fourth heir, Tanya Ammons, was contacted during the week of December 14<sup>th</sup>, and advised us that she intended to have counsel contact us.
- We were not able to contact the fifth McGinnes Heir, Gary Gladfelter, but our search for a working contact for Mr. Gladfelter did not merely end after our first unsuccessful attempt to contact him. An attorney and a librarian at Winstead (MIMC's law firm) each searched for possible other working numbers for Mr. Gladfelter, as did a paralegal for MIMC. In addition to the efforts described in the Best Efforts Letter, calls were made on December 16 and 17 to several numbers that we had hoped, but could not verify, were associated with Mr. Gladfelter or one of the companies possibly associated with him. Additionally, on December 15, one of the other McGinnes Heirs, Ms. Dolores McGinnes, was asked if she knew of a working number for Mr. Gladfelter. Ms. McGinnes advised that she had no number for him. After numerous unsuccessful attempts to contact Mr. Gladfelter, it was decided that the best strategy was to work out access with the other four heirs, and then travel to Mr. Gladfelter's home to discuss access with him. Mr. Gladfelter lives in Seguin, Texas. Thus, it made sense to make progress with the other heirs so we would have some leverage with Mr. Gladfelter when we meet with him. Moreover, if we can work something out with Ms. Warner, we are hopeful she may be willing to encourage Mr. Gladfelter to consent to access as well.
- After the first of the year, we contacted Ms. Warner regarding the status of her conflict issues and the scheduling of a meeting or call to discuss access issues.

---

<sup>7</sup> The January 12 Letter alleged that Respondents have not "attempted to ascertain the name of the other firm representing the mother and her two daughters." January 12 Letter at 2. This assertion by EPA is incorrect. In fact, Respondents' Best Efforts Letter identified the other law firm (stating that Ms. Warner called "informing us that she is working in association with the law firm Chamberlain, Hrdlicka, and the two firms are representing these three VCM heirs on this matter." Best Efforts Letter at 4.) However, it was Respondents' understanding that Chamberlain, Hrdlicka also had a conflict issue to resolve, in addition to that of Adams & Reese. Additionally, Respondents were not notified of the three heirs' representation by the two law firms until December 18, the day the Best Efforts Letter was written. As such, "follow up" with these firms had not been practicable at the time the Best Efforts Letter was sent to EPA. Since the Best Efforts Letter, Respondents have followed up with the firms, as discussed in the January 8 Call and as discussed further below.

Our office spoke with Ms. Warner on January 6, left her a voicemail on January 7, 2010 regarding the scheduling of a meeting, and then spoke with her again on January 8, 2010. Ms. Warner advised that she did not have new information regarding her clients' status in large part because of the holidays. Ms. Warner also stated that one of her clients was on vacation for several days. Additionally, Ms. Warner advised that there were two separate conflict issues needed to be worked out in order for her to move forward with her representation of the McGinnes Heirs. Ms. Warner stated that one of the conflicts had been resolved on or around January 7, 2010, but that the second one had still not been resolved.

- During the conversation on January 8, 2010, we advised Ms. Warner of our January 8 Call with Ms. Nann, in which Ms. Nann suggested that we get a written statement from Ms. Warner regarding the cause for the delay with respect to her clients. Ms. Warner stated that she could probably prepare something in this respect. Respondents will separately provide you with Ms. Warner's statement once it is received.
- As a result of further contacts with Ms. Warner, arrangements were made with her for a meeting to discuss access issues on January 13, 2010. Due to the unresolved conflict with Chamberlain, Hrdlicka, the call was cancelled. However, a telephone call was held with Ms. Warner on January 14, 2010. Following that conversation, we sent Ms. Warner a copy of the PHA's letter consenting to access and requested that she consider something similar for the McGinnes Heirs represented by her. Ms. Warner indicated that she would follow up with us early next week.
- After the first of the year, we also again contacted Tanya Ammons, who had advised us in December that her attorney would be contacting us. During a telephone call on January 6, 2010, Ms. Ammons was asked to provide the name of her attorney. She refused to do so, and also said that she "will not sign anything" because she does believe she owns the Site. She also stated that her attorney had advised her not to sign anything and that she does not want us to speak with her attorney. Ms. Ammons also said she spoke with Dolores McGinnes (who is represented by Adams & Reese) and that Ms. McGinnes also advised her not to sign. We asked whether she would be willing to sign something that says she does not admit ownership of the Site but would not contest access, and she said she would not be so willing. This conversation confirmed that the most expeditious means of obtaining access from the McGinnes Heirs may be to first negotiate the terms of an access agreement with Ms. Warner of Adams & Reese, and then seek to have the other Heirs sign the same agreement.

As discussed in the January 8 Call and as agreed to at the UAO Conference, each letter to the McGinnes Heirs welcomed the McGinnes Heirs to contact EPA regarding the Site, and provided the contact information, including phone numbers and email addresses, for both Mr. Tzhone and Ms. Nann. Additionally, each of the McGinnes Heirs with whom we were able to speak over the telephone were advised that they were welcome to contact the EPA to discuss any concerns about the Site each time we spoke with them. In each telephone conversation



with the McGinnes Heirs, the telephone numbers for both Mr. Tzhone and Ms. Nann were again provided, and it was further noted that such contact information was available in the letters received by the McGinnes Heirs.

The above demonstrates the diligence with which the Respondents' pursued contacts with the McGinnes Heirs.

EPA also appears to contend that Respondents did not exercise "best efforts" because of the alleged undue complexity of the proposed access agreements sent to the McGinnes Heirs and to Big Star, the owner of an adjoining property. During the January 8 Call, Ms. Nann stated that the proposed access agreements that had been provided to the McGinnes Heirs were too complex, and recommended that the Respondents instead use the "model access agreement" located on the last page of the EPA guidance memorandum entitled "Entry and Continued Access Under CERCLA" dated June 5, 1987. A copy of the "model access agreement" ("Model") which is a one-page letter, is attached and marked as Exhibit 3. The access agreements that Respondents sent to McGinnes Heirs and Big Star had been provided to EPA in early December 2009, and EPA had not previously raised any concerns regarding their purported complexity (and in fact, the "complexity" of the access agreements was largely the result of including protections to the grantors in the form of indemnity provisions, requirements for Respondents to maintain insurance, and limits on the scope of activities encompassed by the agreements). In addition, the reasons why Respondents had not been able to obtain access from the McGinnes Heirs was not due to the purported complexity of the draft access agreement, but instead were largely due to the delays associated with dealing with counsel for some of the Heirs.

Additionally, Respondents find any assertion by EPA that they should have utilized the Model surprising because it does not satisfy many of the provisions required by the UAO. Specifically, Paragraph 82 of the UAO requires that access agreements "provide access for EPA and their contractors and oversight officials, and the Respondents or their authorized representatives." However, the Model merely provides access to the "officers, employees, and authorized representatives" of EPA. This language does not provide for access by Respondents, as Respondents are not EPA's officers, employers, or authorized representatives. Indeed, Paragraph 82 of the UAO further states that the "agreements for access shall specify that Respondents are *not* EPA's representatives with respect to liability associated with Site activities." (emphasis added).

Furthermore, Paragraph 83 of the UAO contains specific language regarding the scope of EPA access rights that must be included in access agreements. For example, Paragraph 83 states that EPA must have access for the purposes of "inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their contractor . . . reviewing the progress of the Respondents in carrying out the terms of this Order . . . using a camera, sound recording device or other documentary type equipment . . . and verifying the data submitted to EPA by Respondents." Again, the Model does not authorize any activities conducted by the Respondents or Respondents' contractors and, therefore, would not authorize EPA to monitor the work as required by Paragraph 83. Additionally, the Model does not provide for the use of any documentary type equipment by EPA or Respondents, nor does it authorize Respondents to conduct any of the activities necessary to develop data for EPA to verify. The proposed access agreements sent to the McGinnes Heirs

on December 7, 2009, on the other hand, satisfied all of the requirements contained in Paragraph 83.

Finally, the reason why EPA contends a simplified access form should have been used is the lack of sophistication of the McGinnes Heirs. As was pointed out during the January 8 Call, however, several of the McGinnes Heirs have engaged counsel at a large, sophisticated law firm to represent them. The Lawrence P. McGinnes estate was appraised at a little less than \$8 million, as reflected in the estate inventory contained in Harris County records, a copy of which is attached and marked as Exhibit 4. Thus, there is no basis for EPA to assume a lack of sophistication on the part of the McGinnes Heirs.

In continuing their efforts to quickly obtain access to the Site, Respondents have prepared consent forms based on the Model for each of the McGinnes Heirs. (As addressed below, a similar consent form has been provided to Big Star.) To comply with the UAO, however, the consent forms were revised to incorporate the requirements as discussed above. Copies of the revised access agreements that were sent to the McGinnes Heirs either directly or through counsel on January 12, 2010, and the accompanying letters and e-mails, are attached to this letter and marked as Exhibit 5.

During the January 8 Call, Ms. Nann also stated that efforts to determine who would constitute the McGinnes Heirs had taken too long, noting that the Harris County Attorney had provided Respondents with probate information about some of the Heirs and that it would have required minimal effort to obtain additional probate information. However, the review of the records (which took place as part of the activities described in the Best Efforts Letter) went beyond the information initially provided by Harris County, and included (i) obtaining and reviewing the will of Mr. Lawrence P. McGinnes, Virgil C. McGinnes' son (ii) analyzing the marriage records of Mr. Virgil C. McGinnes and potential impacts of the community property rules in Texas, (iii) determining the current health status of Ms. Billie Doris McGinnes Gladfelter, (iv) obtaining, reviewing and analyzing Ms. Gladfelter's probate information, (v) determining the current status of Ms. Gladfelter's heirs, and (vi) analyzing Ms. Gladfelter's marital status and related potential community property impacts. This process required many hours of attorney, paralegal and librarian time. Additionally, because not all of the information was received at once, the analysis required several weeks to complete. (Moreover, this work was completed on an expeditious basis and letter/access agreements were sent to the McGinnes Heirs on Monday, December 7, 2009, the first business day after Respondents notified EPA that they intend to comply with the UAO.)

The January 12 Letter notes that Respondents should be prepared to offer monetary compensation in order to obtain access (January 12 Letter at 2), and Ms. Nann noted during the January 8 Call that Respondents should have offered to pay for counsel for the Heirs to review the access agreement. Respondents note that although four of the McGinnes Heirs appear to have counsel (the three represented by Ms. Warner, together with Ms. Ammons), none of them have requested funding to retain counsel as a condition of entering into an access agreement. Nonetheless, as to those Heirs not represented by Ms. Warner, Respondents have offered to pay for counsel up to a cap of \$2,500. This offer was contained in letters sent to these Heirs on January 12, 2010 (Exhibit 5). The same letters contained the alternative form of access agreement and also contained a revised form of the original access agreement which does not characterize the Heirs as owning the property at issue.

#### **IV. Big Star**

The Best Efforts Letter summarized our efforts as of December 18, 2009 to obtain access from Big Star. After sending a letter and proposed access agreement to Mr. Roberts, Big Star's President, on December 7, 2009, and discussing the letter and attached access agreement with Mr. Roberts on December 10, 2009, Mr. Roberts sent me an email on the evening of December 10, 2009 that summarized his initial concerns with our proposed access agreement. The following Monday, December 14, 2009, I forwarded Mr. Roberts' email to Ms. Nann to obtain her comments, particularly on Mr. Roberts' desire to add EPA as a signatory to the proposed access agreement. Not having received a response to my email, I again emailed Ms. Nann on January 7, 2010 requesting EPA's response to Mr. Roberts' comments. A copy of that email is attached and marked as Exhibit 6. During the January 8 Call, Ms. Nann stated that EPA would not sign the agreement with Big Star. Ms. Nann's comments during the January 8 Call were the first response from EPA regarding this issue. During the January 8 Call, however, Ms. Nann disclosed to Respondents that she had had discussions with Mr. Roberts during December regarding access issues and had informed him that EPA would not sign the access agreement. Respondents were not previously notified by EPA of these communications directly between Big Star and EPA.

Following the January 8 Call, I again contacted Mr. Jay Roberts of Big Star. I informed him that Respondents were preparing a consent form based on the Model and that EPA had informed us that it was not prepared to be a party to any access agreement between Big Star and Respondents. Mr. Roberts asked that he be provided with both the revised access agreement and the shorter consent form, which he would then review and get back to us on both options. A revised access agreement was sent to Mr. Roberts on January 13, 2010, together with a "simplified" form of access agreement based on the Model. A copy of that letter and enclosures is attached and marked as Exhibit 7.

The January 12 Letter notes that one aspect of "best efforts" was to respond to requests for changes in access agreements, and Ms. Nann questioned in the January 8 Call why further progress had not been made in addressing Mr. Roberts' concerns. In fact, during December (and taking into account the holidays and vacations), Respondents had revised the Big Star access agreement and were prepared to send it to Mr. Roberts once EPA's position regarding becoming a party to the agreement was clarified. But in assessing what Respondents might have done within the 30-day period, the only step that might have been taken was to further press Ms. Nann to respond to my December 14, 2009 email regarding Big Star's request that EPA be a party to the access agreement (Exhibit 6). But given the other issues being addressed concurrently (among them the site stabilization AOC) and the fact that some internal review within EPA was presumably required, Respondents did not press Ms. Nann for a response.

On January 14, 2010, Respondents exchanged several emails with Mr. Roberts. Respondents confirmed with Mr. Roberts that he had received our January 13, 2010 email with the revised access agreements. We also sent a map to Mr. Roberts showing him where Respondents are proposing to construct a fence needed to restrict access to the Site and a road needed for the time critical removal action and future work. Mr. Roberts responded that his attorney is currently reviewing the proposed access agreements.

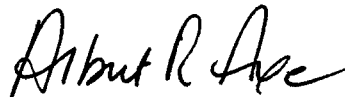
**V. Extension Request**

During the January 8 Call, Ms. Nann stated that Respondents could have requested an extension of the 30-day deadline under the UAO. A similar statement in made in the January 12 Letter, which states that "[n]o extension of time was requested by Respondents to conduct additional efforts to secure access." The UAO does not appear to contemplate a request for an extension of time, but Respondents should clearly be afforded additional time to seek to obtain access before EPA assumes that responsibility. Respondents therefore request that the deadline for Respondents to obtain access or demonstrate best efforts to do so be extended to February 15, 2010. We look forward to EPA's response regarding our request for an extension.

Thank you for your consideration of the information provided in this letter and your consideration of Respondents' request for an extension. As addressed above, Respondents met their obligation under the UAO to use "best efforts" to obtain access and are continuing to make such efforts.

If you have any questions regarding this matter, please do not hesitate to call me at 512-370-2806 or John Cermak at 310-442-8889.

Sincerely,



Albert R. Axe, Jr.

AA:jtf

**Enclosures**

cc: Mr. Francis E. Chin  
MIMC  
1001 Fannin Street, Suite 4000  
Houston, Texas 77002

Mr. John F. Cermak, Jr.  
Baker Hostetler  
12100 Wilshire Boulevard  
15th Floor  
Los Angeles, CA 90025-7120

## **EXHIBIT 1**

### **AMENDED CERCLA SECTION 106 CONFERENCE SUMMARY for the SAN JACINTO RIVER WASTE PITS SUPERFUND SITE CERCLA Docket Number 06-03-10**

The following is an amended summary of the significant issues raised at the San Jacinto River Waste Pits Superfund Site CERCLA Section 106(a) conference. The United States Environmental Protection Agency, Region 6 (EPA) issued a CERCLA Section 106(a) unilateral administrative order (UAO) dated November 20, 2009 to International Paper Company, Inc., and McGinnes Industrial Maintenance Corporation (MIMC) ("Respondents"). As a result, Respondents requested a conference to discuss the implementation of the response actions required by the UAO. The CERCLA Section 106(a) conference occurred on December 3, 2009, and representatives on behalf of International Paper Company, Inc., MIMC and EPA participated.

Representatives appearing before the Chairman of the CERCLA Section 106(a) conference, Jacob Piehl, include the following individuals:

#### **For the EPA:**

Mrs. Barbara Nann, Superfund Attorney, EPA;  
Mr. Stephen Tzhone, Superfund Remedial Project Manager, EPA.  
Mr. Carlos A. Sanchez, Superfund Remedial Branch Chief, Arkansas/Texas  
Section, EPA;  
Mr. Phil Allen, Superfund Remedial Project Manager, EPA;  
Mr. Barry Forsythe, Fish and Wildlife Biologist, USFWS;  
Mr. Bob Werner, Superfund Enforcement Officer, EPA;  
Mr. Jon Rauscher, Superfund Toxicologist, EPA; and  
Mrs. Amy Salinas, Superfund Attorney, EPA.

#### **For the Respondents:**

Mr. March Smith for MIMC, Respondent;  
Mrs. Jennifer Sampson, Integral Consulting, for Respondents;  
Mr. Francis Chin for MIMC, Respondent;  
Mr. Phil Slowiak for International Paper, Respondent;  
Mr. Steve Ginski for International Paper, Respondent;  
Mr. John Cermak, Baker Hostetler, for International Paper, Respondent;  
Mr. Al Axe, Winstead P.C., for MIMC, Respondent; and  
Mr. David Keith, Anchor QEA, for Respondents.

Upon opening the conference, an attendance sheet was circulated and attendees introduced themselves. The Conference Chairman apprized the parties that he was the neutral Agency official chairing the discussions for the CERCLA Section 106(a) conference. The Chairman elaborated on his responsibility to set and direct the agenda for the conduct of the CERCLA Section 106(a) conference, and prepare a written conference summary. It was noted that the parties would be supplied a draft of the summary and provided an opportunity to submit comments on that summary. Also noted was the parties' ability to submit their own written summary of issues presented.

The purpose of the CERCLA Section 106(a) conference was to afford the Respondents the opportunity to discuss with EPA representatives, their intentions to comply with the UAO, implementation of the UAO, and UAO issues of concern. As such, the Conference Chairman noted that EPA representatives would not be required to discuss issues concerning liability, selection of the remedy, and settlement. However, the parties were informed that within five (5) business days from the date of the CERCLA Section 106(a) conference, the Respondents could submit written arguments concerning liability, sufficient cause defenses and factual issues related to the facts determined in the UAO. In this case, Respondents have until December 4, 2009 to submit these arguments.

Following his introductory remarks, the Chairman asked Respondents to begin the conference with Opening Remarks. Mr. Cermak asked if there could be a brief discussion at the end of the conference regarding the upcoming removal Administrative Order on Consent (AOC) meeting. EPA agreed to this. EPA had no Opening Remarks.

The parties then proceeded with questions and comments regarding the UAO document. The significant issues were as follows:

- (1) Respondents stated that they intend to comply with the UAO, and plan to file sufficient cause memos the following day (December 4, 2009). Respondents asked if filing such memos by email would be acceptable. EPA agreed to this filing method.
- (2) Respondents expressed concerns about the implementation of UAO. Respondents found the deadlines to be more aggressive than those provided for in EPA's Guidance on UAOs for Remedial Designs and Remedial Actions (RD/RAs); for example, the phase-scoping deadline is December 7, 2009. Respondents proposed a phone call on December 7, 2009 to discuss future dates for scoping activities. EPA agreed to the call.
- (3) Respondents expressed concerns about the RI/FS Workplan submission deadline of January 18, 2010. Respondents said they would like to conduct alignment meetings with EPA's project coordinators for the RI/FS and the removal action. Respondents suggested conducting at least one of these meetings on January 20, 2010, and setting the submission deadline as March 1, 2010. Respondents stressed that the deadline extensions they are asking for are mainly needed for the early processes of the RI/FS. EPA agreed to the deadline and to work with the respondents in arranging such meetings.

(4) Respondents stated that they believe they can comply with the Quality Management Plan within the 30 day window allowed in the UAO. Respondents also suggested submitting the Site Health and Safety Plan, along with the Project Quality Plan on December 20, 2009. EPA agreed with this deadline.

(5) Respondents inquired as to whether they could submit the Screening-Level Risk Assessment as an appendix to the RI Workplan, in order to provide more opportunities for interaction with EPA. EPA agreed to this plan.

(6) Respondents asked to schedule the scoping meeting for 10 a.m. CDT on December 7, 2009. All parties agreed to this time. Mr. Keith for Respondents agreed to set up the meeting and Mr. Tzhone agreed to be the point of contact for EPA. Mr. Ginski for Respondents added that Anchor will be the Respondents' Project Coordinator.

(7) Respondents proposed setting a meeting date for the removal AOC. This meeting would include meeting with project managers to discuss coordinating activities concerning Harris County. Both sides agreed on December 10, 2009 as the meeting date. Houston was agreed upon as the site of the meeting, to allow EPA technical workers to view the Site.

(8) Respondent proposed submitting the Statement of Work for the removal AOC to EPA on January 29, 2010. EPA agreed to this timeframe.

(9) Respondents asked to schedule a call for later in the month for preliminary discussion of the removal AOC. December 10, 2009 at 8 a.m. CDT was agreed upon by all parties.

(10) EPA mentioned that reporters may be at the December 9, 2009 Harris County meeting. EPA agreed to update reporters that it has issued a proposed AOC and a UAO, but will avoid specifics. EPA also informed Respondents that it has been developing an in-house database to be shared with the technical people on Respondents' side. Respondents inquired as to the type and level of media presence at the meeting. EPA replied that it is unknown, and that Respondents should contact Harris County for that information.

(11) Respondents emphasized that Harris County's interest in stabilizing the site is important to them. EPA agreed with this sentiment.

(12) Respondents asked whether others that may have interest in the Site have been sent 104(e) requests. EPA replied that it is hoping that technical data from the RIFS will be helpful in creating a targeted 104(e), and that EPA does not want to send out a generic 104(e) only to receive a generic denial.

(13) Respondents inquired about dredging activity performed by Big Star. Mrs. Nann for

EPA stated she would expect a general denial until EPA has specific data tying the parties to the Site. Respondents mentioned that they identified, from aerial photographs, a 1997 dredge cut directly into the site, and supplied EPA with that information. Mrs. Nann replied that such aerial photos dating back to the 1970s indicate that the site has been inundated by the San Jacinto River. Respondents replied that they are not denying prior releases, but they believe at least one release was due to dredging activities, and noted that preliminary data from fingerprinting shows material from the pit is definitely on the Big Star property. EPA replied that the question remains as to whether that materials is due to dredging in the area or the pits themselves or dredging of sediments in the San Jacinto River. EPA stated that they will be able to ascertain much more once they perform the RI/FS and look at levees and site conditions. Respondents replied that they understand the situation and will provide EPA with technical information.

(14) Respondents stated that the sampling associated with the stabilization process should be performed soon. EPA stated that they need to verify that the dioxin fingerprints are the same. Respondents replied that these types of dioxin have a specific fingerprint. EPA replied that it would be very interested in information showing the same type and location of the specific dioxin to find additional PRPs. EPA added that it realizes there may be other sources, including downstream, and EPA doesn't want to hold Respondents accountable for more than is their fault.

(15) EPA returned to the issue of initial site stabilization. Mr. Allen for EPA stated that he will be taking the lead on the removal action, and that though he presently knows little about this project, he has performed dozens of construction completions. Mr. Allen stated he would like to temporarily stabilize the site with sheet piles to keep the sludge from slipping into the water. He suggested implementing this plan through a time-critical completion, to prevent future releases and buy the parties time to do a proper design. Respondents responded that the UAO is already time critical, and added that there are access issues. Mrs. Nann for EPA added that the landowner is deceased. Respondents stated they will be sending letters containing access agreements to landowners, but it may take a while to gain access. Respondents then suggested waiting for the following week's scheduled site visit to consider site stabilization options and develop plans. Mr. Allen for EPA agreed but reemphasized arriving at a time-critical response. Respondents answered that they will consider such a response, but noted that the material at the site which may contain dioxin is fairly stable.

(16) Respondents stated that they are using best efforts to obtain access by preparing letters containing EPA language to be sent on December 7, 2009 at the latest. Respondents have identified six to eight McGinness heirs, as well as Big Star and the Port of Houston Authority, which they may send letters to. Respondents asked EPA at what point EPA considers that best efforts have been made, if Respondents do not receive responses back? EPA recommended documenting calls and other contacts, and gave as an example of "best efforts" knocking on doors to locate property owners to gain access. EPA also offered to assist with obtaining access. Respondents agreed to supply EPA



with contact information and sample access agreements. Both sides agreed to add language including Mrs. Nann and Mr. Tzhones' contact information, as well as copying them on correspondence. Respondents added that the County has mentioned their interest in assisting with access as well. Both sides agreed to a phone call to follow-up on this issue.

(17) Respondents inquired whether EPA can assist with arranging to place barriers on the state highway to prevent persons from accessing the site. EPA replied that they can erect barriers reading "Superfund: Do Not Enter." Respondents added that TxDOT has shown willingness to assist with the barriers, but nearby construction has delayed their efforts.

(18) EPA suggested coordinating an information exchange so that Respondents have access to EPA GIS-database data and can ensure that their data is complete. Parties agreed that Mr. Tzhone for EPA would send all the raw data to Mr. Keith for Respondent. Respondents inquired about receiving the workplan as well.

(19) Respondent noted paragraph 75, which requires Respondents to name a project coordinator, as well as paragraph 52, which requires Respondents to name a project manager. EPA agreed that Respondents are not required to designate a project manager under paragraph 52.

(20) Respondents mentioned their desire to incorporate hotspot removal, and asked for EPA's agreement with this proposal. EPA agreed that this topic was okay to address in the December 10, 2009 meeting.

(21) EPA inquired as to whether there was an agenda for the December 9, 2009 meeting. Respondents stated that, while there is no formal agenda, Harris County wishes to discuss issues including an overview of PRPs, site stabilization proposals, EPA comments on Respondents' proposal, and site access issues. EPA responded that Respondents could say that they have presented proposals to EPA and that they are happy with them. EPA confirmed that TCEQ will be on the phone for the meeting.

(22) Mr. Tzhone for EPA identified the three TCEQ project managers for the site: Luda Voskov (primary), Phil Windsor (backup), and Steven Ellis (primarily associated with permits). Mrs. Nann for EPA identified the TCEQ attorney for the site as Christa McClintock.

(23) EPA stated that it does not have a problem with site stabilization, but expects quicker timelines for characterization, stabilization, and cleanup compared to other sites. Respondents confirmed that they share the objective of moving forward quickly, including completion of the RI/FS, and stressed the importance of coordination and an initial focus on removal. EPA expressed its willingness to adjust certain timeframes to include data for the removal, to work with respondents' technical workers, as well as its desire to begin work at the Site within six months.


(24) Both sides reviewed the dates of deadlines set during the conference:

- December 4, 2009: Designation of project coordinator, UAO responses, and access letters due.
- December 7, 2009: Preliminary scoping meeting at 10am CDT.
- December 9, 2009: Meet at Harris County
- December 10, 2009: Technical side meets with project coordinators and takes site tour; Legal side telephone call at 8 am CDT.
- December 20, 2009: Health and Safety Plan and Quality Management Plan due.
- January 20, 2010: Technical side alignment meeting, tentatively planned for Austin (date changed from the prior agreed-upon date of 1/20/10).
- January 29, 2010: Statement of Work due.
- March 1, 2010: RI/FS Workplan due.

(25) EPA requested a timetable, in spreadsheet format, showing deliverables and dates for the RI/FS and removal action, with both legal and technical obligations. Both sides agreed to include such a timetable as part of the monthly reporting process;

(26) Respondents asked whether an agreement to dates different than those in the UAO constituted a modification of the UAO. EPA replied that completion of the 106(a) Conference Summary will note the newly agreed upon dates and effectively incorporates the newly agreed upon dates as part of the UAO mandated deadlines.

After the above issues were discussed, the CERCLA Section 106(a) conference adjourned. The parties provided comments on an initial summary. Those comments that were consistent with the Chairman's notes have been added to this amended Conference summary. All comments will be provided to EPA for placement in the record.

  
Jacob Piehl  
Conference Chairman

12/18/09  
Date

**EXHIBIT 2**

---

**From:** Axe, Al  
**Sent:** Monday, December 14, 2009 11:11 AM  
**To:** 'nann.barbara@epa.gov'  
**Cc:** 'Cermak, John F.'; Foringer, Jenn  
**Subject:** FW: Big Star Barge & Boat Co.Inc. Channelview Texas Property Access Agreement  
**Attachments:** 011.JPG; 014.JPG

Barbara,

Attached please find the response we have received from Jay Roberts, President of Big Star, regarding our proposed access agreement. Please let me know whether EPA is willing to sign an agreement as requested by Big Star. We will attempt to address Mr. Roberts' other two stated concerns. Thanks. Al

**Albert R. Axe, Jr.**  
Direct: (512) 370-2806  
Fax: (512) 370-2850  
profile link: <http://www.winstead.com/Attorneys/aaxe>

---

**From:** RobMarSur@aol.com [mailto:RobMarSur@aol.com]  
**Sent:** Thursday, December 10, 2009 8:40 PM  
**To:** Axe, Al  
**Subject:** Big Star Barge & Boat Co.Inc. Channelview Texas Property Access Agreement

Mr. Axe

This Email will confirm our phone conversation of today regarding the above. I am in receipt of your CMRRR letter, with attachments, dated 12-7-2009.

As I stated on the phone I am not in a position to sign the 'Access Agreement' as submitted at this time due to the following, but not limited to, concerns:

- 1) Liability Coverage for ALL parties accessing the property.
- 2) Security of the property. For your clarification regarding the 'gates' please see attached photo 014 showing the "West" gate and photo 011 showing the "East" gate.
- 3) Agreement allowing the EPA to enter the property and no signature line on the agreement for said Agency.

The above listed 'concerns' are my own based on initial review of the 'Agreement' and I anticipate having our legal counsel review the original and all future revisions of the Agreement.

Will await your reply,

Jay W. Roberts  
Big Star Barge & Boat Co., Inc

9829,2

## CONSENT FOR ACCESS TO PROPERTY

Name: \_\_\_\_\_

Address of Property: \_\_\_\_\_  
\_\_\_\_\_

I consent to officers, employees, and authorized representatives of the United States Environmental Protection Agency (EPA) entering and having continued access to my property for the following purposes:

[the taking of such soil, water, and air samples as may be determined to be necessary;]

[the sampling of any solids or liquids stored or disposed of on site;]

[the drilling of holes and installation of monitoring wells for subsurface investigation;]

[other actions related to the investigation of surface or subsurface contamination;]

[the taking of a response action including . . . .]

I realize that these actions by EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. § 9601 et seq.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature

EXHIBIT 4

JAN 1996 TERM

PRO. REC. REC.  
39 COPY

NO. 20765

|                       |   |                        |
|-----------------------|---|------------------------|
| THE ESTATE OF         | § | IN COUNTY COURT        |
| LAWRENCE P. MCGINNES, | § | AT LAW NO. 3           |
| DECEASED              | § | BRAZORIA COUNTY, TEXAS |

**INVENTORY, APPRAISEMENT AND LIST OF CLAIMS**

Date of Death: March 17, 1995

The following is a full, true and complete Inventory and Appraisement of all personal property and of all real property situated in the State of Texas, together with a List of Claims due and owing to this Estate as of the date of death, which have come to the possession or knowledge of the undersigned.

INVENTORY AND APPRAISEMENT

|  |                           |
|--|---------------------------|
| Real Property (See Schedule A)             | \$720,430                 |
| Stocks and Bonds (See Schedule B)          | 5,924,721                 |
| Mortgages, Notes and Cash (See Schedule C) | 36,392                    |
| Insurance (See Schedule D)                 | 197,785                   |
| Miscellaneous (See Schedule F)             | 602,156                   |
| <b>TOTAL</b>                               | <b><u>\$7,481,484</u></b> |

LIST OF CLAIMS

There are no claims of this Estate.

The foregoing Inventory, Appraisement, and List of Claims should be approved and ordered entered of record.

Respectfully submitted,

HENRI & DRUCKER, P.C.

By: 

JAMES T. MAHONEY  
State Bar No. 12842600  
Two Houston Center  
909 Fannin, Suite P-340  
Houston, Texas 77010  
Telephone (713) 659-3290  
Facsimile (713) 659-2537  
ATTORNEY FOR ESTATE

Baker Hostetler

COPY

January 12, 2010

Baker & Hostetler LLP  
12100 Wilshire Boulevard  
15th Floor  
Los Angeles, CA 90025-7120  
T 310.820.8800  
F 310.820.8859  
www.bakerlaw.com

**VIA HAND DELIVERY & CERTIFIED MAIL**

Tanya Gladfelter Ammons  
218 Dogwood Street  
Lake Jackson, TX 77566-4510

John F. Cermak, Jr.  
direct dial: 310.442.8885  
jcermak@bakerlaw.com

Re: San Jacinto River Waste Pits (the "Property") --  
TIME SENSITIVE REQUEST FOR CONSENT  
FOR ACCESS TO PROPERTY

Dear Ms. Ammons:

Mr. Gladfelter:

This letter is sent to you on behalf of McGinnes Industrial Maintenance Corporation and International Paper Company regarding the above Property. This is to again request your consent for access to the Property by signing the attached written permission for access to the Property ("Consent"). As an alternative to the proposed Access Agreement previously sent to you by letter dated December 7, 2009, we have enclosed a shorter Consent form, which you may prefer. Please note the following:

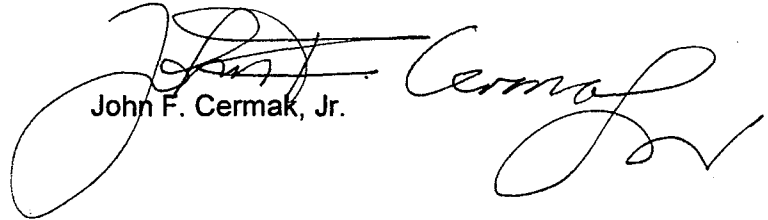
- (1) By signing the Consent you are NOT acknowledging any ownership in the Property.
- (2) Even if you inherited an ownership interest in the Property, you may be entitled to protections from liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") known as "Superfund."

If you prefer the previously proposed Access Agreement, we are happy to incorporate similar language stating that you do not acknowledge any ownership in the Property.

If you want to first consult with an attorney, we will pay up to \$2,500 in attorney's fees. However, based on discussions with the U.S. Environmental Protection Agency, it is important that we have a signed Consent by January 31, 2010.

Please call either of the undersigned if you have any questions, or you can contact Barbara Nann at the United States Environmental Protection Agency at (214) 665-2157 or [nann.barbara@epa.gov](mailto:nann.barbara@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Cermak, Jr.", with a large, stylized flourish at the end.

John F. Cermak, Jr.

JFC/nlw  
Enclosure

cc: Barbara A. Nann (with enclosure)  
Albert R. Axe, Jr. (with enclosure)

## CONSENT FOR ACCESS TO PROPERTY

Name: Tanya Gladfelter Ammons

Location of Property: The property is located near the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"). Such property has been identified by the United States Environmental Protection Agency ("EPA") as part of the San Jacinto River Waste Pits Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," also referred to as Superfund), 42 U.S.C. § 9601 *et seq.*

Without admitting that I have any ownership in the Property, I consent as follows: (1) to officers, employees, contractors, oversight officials, and authorized representatives of EPA, McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company ("International Paper") (MIMC and International Paper are not representatives of EPA with respect to liability associated with activities at the Property) entering and having continued access to the Property for the following purposes:

- a. the taking of soil, water, and air samples as may be determined to be necessary;
- b. the sampling of any wastes disposed of on the property;
- c. the drilling of holes and installation of monitoring wells for subsurface investigation;
- d. other actions related to the investigation of surface or subsurface contamination;
- e. the taking of a response action that may include (i) the installation of fencing to prevent unauthorized entry onto the property, (ii) the construction of berms and the taking of other measures to temporarily or permanently confine and consolidate wastes disposed of on the property and to prevent releases of such wastes to the environment, and (iii) conducting any other response actions (as defined in CERCLA) as may be necessary at the property that are approved by EPA.

(2) to EPA and its authorized representatives having the authority to enter and freely move about all Property where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or MIMC and International Paper and their contractor; reviewing the progress of MIMC and International Paper in carrying out any work; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by MIMC and IPC. I realize that these actions by EPA will be undertaken pursuant to its response and enforcement responsibilities under CERCLA.



This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

---

Date

---

Signature

Baker Hostetler

COPY

Baker & Hostetler LLP

12100 Wilshire Boulevard  
15th Floor  
Los Angeles, CA 90025-7120

T 310.820.8800  
F 310.820.8859  
www.bakerlaw.com

January 12, 2010

**VIA HAND DELIVERY & CERTIFIED MAIL**

Gary Gladfelter  
169 Castle Breeze Drive  
Seguin, TX 78155-8700

John F. Cermak, Jr.  
direct dial: 310.442.8885  
jcermak@bakerlaw.com

Re: San Jacinto River Waste Pits (the "Property") --  
TIME SENSITIVE REQUEST FOR CONSENT  
FOR ACCESS TO PROPERTY

Dear Mr. Gladfelter:

This letter is sent to you on behalf of McGinnes Industrial Maintenance Corporation and International Paper Company regarding the above Property. This is to again request your consent for access to the Property by signing the attached written permission for access to the Property ("Consent"). As an alternative to the proposed Access Agreement previously sent to you by letter dated December 7, 2009, we have enclosed a shorter Consent form, which you may prefer. Please note the following:

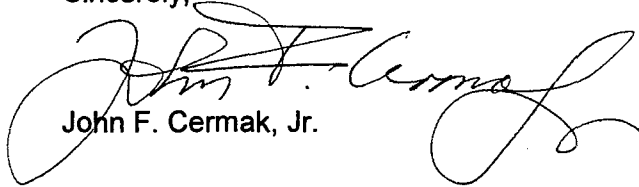
- (1) By signing the Consent you are NOT acknowledging any ownership in the Property.
- (2) Even if you inherited an ownership interest in the Property, you may be entitled to protections from liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") known as "Superfund."

If you prefer the previously proposed Access Agreement, we are happy to incorporate similar language stating that you do not acknowledge any ownership in the Property.

If you want to first consult with an attorney, we will pay up to \$2,500 in attorney's fees. However, based on discussions with the U.S. Environmental Protection Agency, it is important that we have a signed Consent by January 31, 2010.

Please call either of the undersigned if you have any questions, or you can contact Barbara Nann at the United States Environmental Protection Agency at (214) 665-2157 or [nann.barbara@epa.gov](mailto:nann.barbara@epa.gov).

Sincerely,



John F. Cermak, Jr.

JFC/nlw  
Enclosure

cc: Barbara A. Nann (with enclosure)  
Albert R. Axe, Jr. (with enclosure)

## CONSENT FOR ACCESS TO PROPERTY

Name: Gary Gladfelter

Location of Property: The property is located near the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"). Such property has been identified by the United States Environmental Protection Agency ("EPA") as part of the San Jacinto River Waste Pits Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," also referred to as Superfund), 42 U.S.C. § 9601 *et seq.*

Without admitting that I have any ownership in the Property, I consent as follows: (1) to officers, employees, contractors, oversight officials, and authorized representatives of EPA, McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company ("International Paper") (MIMC and International Paper are not representatives of EPA with respect to liability associated with activities at the Property) entering and having continued access to the Property for the following purposes:

- a. the taking of soil, water, and air samples as may be determined to be necessary;
- b. the sampling of any wastes disposed of on the property;
- c. the drilling of holes and installation of monitoring wells for subsurface investigation;
- d. other actions related to the investigation of surface or subsurface contamination;
- e. the taking of a response action that may include (i) the installation of fencing to prevent unauthorized entry onto the property, (ii) the construction of berms and the taking of other measures to temporarily or permanently confine and consolidate wastes disposed of on the property and to prevent releases of such wastes to the environment, and (iii) conducting any other response actions (as defined in CERCLA) as may be necessary at the property that are approved by EPA.

(2) to EPA and its authorized representatives having the authority to enter and freely move about all Property where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or MIMC and International Paper and their contractor; reviewing the progress of MIMC and International Paper in carrying out any work; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by MIMC and IPC. I realize that these actions by EPA will be undertaken pursuant to its response and enforcement responsibilities under CERCLA.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

---

Date

---

Signature

**Nguyen, Ly**

---

**From:** ausadmin@dttrac.net  
**Sent:** Wednesday, January 13, 2010 3:07 PM  
**To:** Nguyen, Ly  
**Subject:** POD for Control Number 244845

ATTN: LY NGUYEN

CTRL: 244845 ORDER DATE: 1/13/10 SERVICE TYPE: 4 HOUR  
CUST: 2300 WINSTEAD PC REF: 48434-1

|                  |                         |
|------------------|-------------------------|
| PU: WINSTEAD PC  | DL: GARY GLADFELTER     |
| 401 CONGRESS AVE | 169 CASTLE BREEZE DRIVE |
| AUSTIN TX 78701  | SEGUIN TX 78155         |
| RM:2100          |                         |

TO SEE: GARY GLADFELTER

DEL DATE: 1/13/10 TIME: 15:05 SIGN: LEFT N DOOR PER ALLEY

**Nguyen, Ly**

---

**From:** Axe, Al  
**Sent:** Tuesday, January 12, 2010 4:18 PM  
**To:** 'RobMarSur@aol.com'  
**Cc:** 'nann.barbara@epa.gov'  
**Subject:** Access to Big Star Property  
**Attachments:** Austin\_1-584552-v6-Access Agreement Big Star Barge.DOC; Austin\_1-587752-v4-Consent for access to property Big Star.DOC

Dear Jay,

As we discussed last Friday, January 8, attached for your review are the revised Access Agreement and, as an alternative, a shorter Consent for Access to Property modeled after the sample consent form provided to you by Barbara Nann of EPA Region 6. In both documents, we addressed the concerns you expressed to us by email dated December 10, 2009. As discussed, EPA has declined to sign as a party to either of these documents.

We note that EPA is strongly pushing to finalize access quickly. As such, we would appreciate your response at your earliest convenience. If you have any questions regarding these documents, please feel free to contact me at 512-370-2806 or Barbara Nann of EPA at 214-665-2457.

Best regards,  
Al

1/12/2010

## ACCESS AGREEMENT

This Access Agreement ("Agreement") is made and entered into as of the \_\_\_\_ day of January, 2010 by and among McGinnes Industrial Maintenance Corporation and International Paper Company (collectively, the "Grantees"), and Big Star Barge & Boat Company, Inc. ("Owner").

### RECITALS

**WHEREAS**, Owner owns three (3) adjoining pieces of property located near the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (collectively, the "Property").

**WHEREAS**, on November 20, 2009, the U.S. Environmental Protection Agency ("EPA") issued a Unilateral Administrative Order ("UAO") to Grantees requiring that they conduct a Remedial Investigation/Feasibility Study ("RI/FS") on portions of the Property.

**WHEREAS**, Grantees anticipate that they may enter into an Administrative Order on Consent ("AOC"), based on a proposed AOC provided to them by EPA on November 20, 2009, that will require Grantees to conduct a short-term removal action to stabilize property including portions of the Property.

**WHEREAS**, Grantees and EPA desire access, and Owner desires to allow Grantees and EPA and their employees, contractors, representatives and agents access to the Property pursuant to the terms and conditions set forth below as a means of implementing the Environmental Work, as defined herein.

**WHEREAS**, in entering into this Agreement, Grantees and Owner have agreed to each provide to the other an indemnity that is intended to apply only to Claims (as defined herein) arising solely out of access to the Property and in doing so, to reserve any rights and Claims that they have against each other related to the Environmental Work, including without limitation, any such rights and Claims related to responsibility for any pre-existing contamination at, on, or about the Property.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

1. Owner does hereby give and grant Grantees and their consultants, contractors, agents, and employees, as well as the authorized representatives of EPA and its contractors and oversight officials, the right to enter upon the Property for the purposes of performing environmental investigations and other response activities that are approved by EPA in accordance with the UAO, AOC, and other orders entered into between the Grantees and EPA (collectively, "EPA Orders"), including without limitation any 1) soil, water, waste, sediment, and air sampling as may be determined to be necessary; 2) conducting removal and/or remedial actions (as defined in the Comprehensive Environmental Response, Compensation, and Liability



Act, 42 U.S.C. § 9601 *et. seq.* ("CERCLA")), including without limitation the installation of security fencing or other measures to limit access to the public and, to the extent necessary, the construction of berms and the taking of other measures to confine and consolidate wastes disposed of on the Property and to prevent releases of such wastes to the environment; or 3) conducting any other response actions (as defined in CERCLA) as may be necessary at the Property (collectively referred to as "Environmental Work").

2. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about the Property for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or Grantees and their contractor(s) pursuant to the EPA Orders; reviewing the progress of the Grantees in carrying out the terms of EPA Orders; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Grantees. All parties with access to the Property under this paragraph shall comply with all approved health and safety plans.

3. Owner shall take into account the Environmental Work in Owner's use of the Property, and avoid unreasonable interference with the same. Owner shall not relocate, disturb, damage, or interfere with the wells, equipment or other fixtures or personalty used in the Environmental Work without obtaining Grantees' and EPA's prior written consent. Owner shall be responsible for any cost or expense to abandon, relocate, repair, modify, or replace such wells, equipment, or other fixtures or personalty resulting from the acts, omissions, or requests of Owner or Owner's tenants, contractors, licensees, invitees, or employees (exclusive of Grantees or EPA).

4. Grantees will require their consultants and contractors conducting the Environmental Work on the Property to hold and, throughout the duration of the Environmental Work, maintain the following types and amounts of insurance, at a minimum: (i) commercial general liability insurance (\$1,000,000 per occurrence and \$1,000,000 annual aggregate for bodily injury or death and property damage); (ii) comprehensive automotive liability insurance (\$1,000,000 combined single limit of liability per occurrence for bodily injury or death and property damage); and (iii) errors and omissions insurance, including pollution liability applicable to the Environmental Work (\$1,000,000 with respect to claims made against the insured for negligent errors or omissions in the performance of the Environmental Work hereunder). Upon request, Grantees will provide to Owner a certificate of insurance evidencing such coverage.

5. Grantees will require their contractors conducting the Environmental Work on the Property, throughout the duration of the Environmental Work, to reasonably secure the Property from the entry by third parties during such time that the contractors are working on-site. Grantees will further require their contractors, each day after Grantees' contractors have stopped working, to secure the Property by locking all entry gates with chains and locks provided by Owner.

6. This Agreement shall terminate ninety (90) days after the date the EPA issues written evidence that no further investigation, remediation or monitoring is necessary at the Property.

7. Grantees are not EPA's representatives with respect to liability associated with Property activities.

8. Owner agrees to indemnify, defend and hold Grantees harmless from and against any claims, liabilities, damages, losses, costs, suits, expenses, demands, judgments, fines, penalties, or causes of action (collectively "Claims", individually "Claim") suffered or incurred by Grantees arising out of a Claim made, or action or proceeding initiated, by a third party, against Grantees wherein such Claim(s) arises solely out of any entry, use of, or activity conducted by the Owner or its employees, contractors, representatives and agents on, under or adjacent to the Property.

9. Grantees agree to indemnify, defend and hold Owner harmless from and against any Claims suffered or incurred by Owner arising out of a Claim made, or action or proceeding initiated, by a third party, against Owner wherein such Claim(s) arises solely out of any entry, use of, or activity conducted by the Grantees or their employees, contractors, representatives and agents on, under or adjacent to the Property.

10. Notwithstanding anything contained herein to the contrary, in no event shall this Agreement be deemed to create an obligation of Grantees to Owner to perform any of the Environmental Work.

11. No provision of this Agreement nor any action under or by reason of this Agreement shall in any action, proceeding or litigation operate or be construed as an admission by any party of any violation of law or regulation, any liability, fault, or past or present wrongdoing, or any breach of duty at any time.

12. Nothing in this Agreement shall waive, prejudice or create a right to indemnity for any right, Claim, cause of action or defenses that any party may otherwise now or in the future have under the law, including without limitation, Grantees' right to recovery from Owner for the response costs (as defined in CERCLA) associated with the Environmental Work.

13. If any provision of this Agreement is held to be invalid or unenforceable, that provision may be severed and the remaining provisions shall remain in full force and effect.

14. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts as reasonably necessary or appropriate to perform the material terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.

15. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document and each signed counterpart shall be deemed an original hereof. Faxed or e-mailed "portable document file" (i.e., pdf) signature shall be of the same force and effect as original signatures.

16. Any notice required to be provided hereunder shall be in writing and shall be deemed given when hand-delivered, sent postage prepaid by registered or certified mail, return receipt requested, or by e-mail, to the parties for whom the notice is intended at the mailing and

email addresses appearing on the signature page of this Agreement. Any party may by written notice change the address to which notices may be sent.

17. This Agreement may be modified only by the subsequent written agreement of the parties.

18. The provisions and covenants contained herein shall inure to, and be binding upon the successors and permitted assignees of the parties hereto. Owner may assign its respective rights, privileges, duties and obligations hereunder with written notice to Grantees. Nothing herein shall be construed to restrict in any manner Owner's rights to sell, pledge or alienate the Property. Owner shall cause any party who acquires or leases the Property from Owner to enter into an Agreement with Grantees in form and substance substantially similar to this Agreement, or shall assign its rights, duties, privileges and obligations under this Agreement to such acquiror or tenant of the Property.

19. This Agreement supersedes all previous agreements between the parties and constitutes the entire understanding of the parties relative to the subject matter hereof.

20. All notifications made pursuant to this Access Agreement shall be directed:

**as to Owner:** Big Star Barge & Boat Company, Inc.  
2435 Broadway Street  
Pearland, Texas 77581  
Attn: Jay Roberts

**as to Grantees:** McGinnes Industrial Maintenance Corporation  
1000 Parkwood Circle, Suite 700  
Atlanta, Georgia 30339  
Attn: March Smith

International Paper Company  
6400 Poplar Avenue  
Memphis, Tennessee 38197  
Attn: Steve Ginski

**with copy to:** Winstead PC  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701  
Attn: Albert R. Axe, Jr.

Baker & Hostetler, LLP  
12100 Wilshire Boulevard, 15th Floor  
Los Angeles, California 90025  
Attn: John Cermak

21. This Agreement shall be interpreted and enforced according to the laws of the State of Texas.

22. This Agreement may be executed in multiple originals.

23. Copies of this Agreement shall be provided to EPA by Grantees upon request prior to Grantees' initiation of field activities.

24. The foregoing provisions are agreed to, as evidenced by the signatures of the authorized representatives of or attorneys for each Party as set forth below.

IN TESTIMONY WHEREOF, this instrument is executed effective as of the date first above written.

**GRANTEES**

**McGinnes Industrial Maintenance Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**International Paper Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OWNER**

**Big Star Barge & Boat Company, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Austin\_1 584552v6 48434-1

## CONSENT FOR ACCESS TO PROPERTY

Name: Big Star Barge & Boat Company, Inc.

Location of Properties: The three (3) adjoining pieces of property are located near the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (collectively, the "Properties"). Such Properties have been identified by the United States Environmental Protection Agency ("EPA") as part of the San Jacinto River Waste Pits Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," also referred to as Superfund), 42 U.S.C. § 9601 *et seq.*

Big Star Barge & Boat Company, Inc. consents as follows: (1) to officers, employees, contractors, oversight officials, and authorized representatives of EPA, McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company ("International Paper") (MIMC and International Paper are not representatives of EPA with respect to liability associated with activities at the Property) entering and having continued access to the Properties for the following purposes:

- a. the taking of soil, water, and air samples as may be determined to be necessary;
- b. the sampling of any wastes disposed of on the Properties;
- c. the drilling of holes and installation of monitoring wells for subsurface investigation;
- d. other actions related to the investigation of surface or subsurface contamination;
- e. the taking of a response action that may include (i) the installation of fencing to prevent unauthorized entry onto the Properties, (ii) the construction of berms and the taking of other measures to temporarily or permanently confine and consolidate wastes disposed of on the Properties and to prevent releases of such wastes to the environment, and (iii) conducting any other response actions (as defined in CERCLA) as may be necessary at the Properties that are approved by EPA.

(2) to EPA and its authorized representatives having the authority to enter and freely move about all Property where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or MIMC and International Paper and their contractor; reviewing the progress of MIMC and International Paper in carrying out any work; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by MIMC and IPC. I realize that these actions by EPA will be undertaken pursuant to its response and enforcement responsibilities under CERCLA.

MIMC and IPC will require their contractors conducting the work hereunder on the Properties to reasonably secure the Properties from entry by third parties during such time that the contractors are working on-site. MIMC and IPC will further require their contractors, each day after their contractors have stopped working, to secure the Properties by locking all entry gates with chains and locks provided by Big Star Barge & Boat Company, Inc.

MIMC and IPC will further require their consultants and contractors conducting the work hereunder on the Properties to hold the following types and amounts of insurance, at a minimum: (i) commercial general liability insurance (\$1,000,000 per occurrence and \$1,000,000 annual aggregate for bodily injury or death and property damage); (ii) comprehensive automotive liability insurance (\$1,000,000 combined single limit of liability per occurrence for bodily injury or death and property damage); and (iii) errors and omissions insurance, including pollution liability applicable to the work hereunder (\$1,000,000 with respect to claims made against the insured for negligent errors or omissions in the performance of the work hereunder). Upon request, MIMC and IPC will provide to Owner a certificate of insurance evidencing such coverage.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

**Big Star Barge & Boat Company, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Foringer, Jenn**

---

**From:** Foringer, Jenn  
**Sent:** Tuesday, January 12, 2010 4:43 PM  
**To:** 'lori.warner@arlaw.com'  
**Cc:** Axe, Al  
**Subject:** San Jacinto River: Consent Form  
**Attachments:** Austin\_1-588008-v1-Consent for Access McGinnes A&R.DOC

Lori,

As I mentioned to you earlier, MIMC and IPC have prepared a shorter consent form, which your clients may prefer to the original proposed Access Agreement. Attached is a copy of the form for your review. Please note that in this form, your clients do not admit to ownership of the property. Of course, if your clients prefer the original Access Agreement, we can include similar language that they do not admit ownership of the property.

We would like to set up a call with you and with the counsel for IPC tomorrow (Wednesday) at 3 p.m. to discuss these issues further. Please let me know if that time still works for you.

Thank you,  
Jenn

**Jennifer Tjia Foringer**  
Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701  
512.370.2822 *direct* | 512.370.2850 *fax* | [jforinger@winstead.com](mailto:jforinger@winstead.com) | [www.winstead.com](http://www.winstead.com)

1/15/2010



## CONSENT FOR ACCESS TO PROPERTY

Name: Dolores Jean McGinnes

Location of Property: The property is located near the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"). Such property has been identified by the United States Environmental Protection Agency ("EPA") as part of the San Jacinto River Waste Pits Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," also referred to as Superfund), 42 U.S.C. § 9601 *et seq.*

Without admitting that I have any ownership in the Property, I consent as follows: (1) to officers, employees, contractors, oversight officials, and authorized representatives of EPA, McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company ("International Paper") (MIMC and International Paper are not representatives of EPA with respect to liability associated with activities at the Property) entering and having continued access to the Property for the following purposes:

- a. the taking of soil, water, and air samples as may be determined to be necessary;
- b. the sampling of any wastes disposed of on the property;
- c. the drilling of holes and installation of monitoring wells for subsurface investigation;
- d. other actions related to the investigation of surface or subsurface contamination;
- e. the taking of a response action that may include (i) the installation of fencing to prevent unauthorized entry onto the property, (ii) the construction of berms and the taking of other measures to temporarily or permanently confine and consolidate wastes disposed of on the property and to prevent releases of such wastes to the environment, and (iii) conducting any other response actions (as defined in CERCLA) as may be necessary at the property that are approved by EPA.

(2) to EPA and its authorized representatives having the authority to enter and freely move about all Property where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or MIMC and International Paper and their contractor; reviewing the progress of MIMC and International Paper in carrying out any work; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by MIMC and IPC. I realize that these actions by EPA will be undertaken pursuant to its response and enforcement responsibilities under CERCLA.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

---

Date

---

Signature

## CONSENT FOR ACCESS TO PROPERTY

Name: Tammy Kim McGinnes Idoux

Location of Property: The property is located near the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"). Such property has been identified by the United States Environmental Protection Agency ("EPA") as part of the San Jacinto River Waste Pits Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," also referred to as Superfund), 42 U.S.C. § 9601 *et seq.*

Without admitting that I have any ownership in the Property, I consent as follows: (1) to officers, employees, contractors, oversight officials, and authorized representatives of EPA, McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company ("International Paper") (MIMC and International Paper are not representatives of EPA with respect to liability associated with activities at the Property) entering and having continued access to the Property for the following purposes:

- a. the taking of soil, water, and air samples as may be determined to be necessary;
- b. the sampling of any wastes disposed of on the property;
- c. the drilling of holes and installation of monitoring wells for subsurface investigation;
- d. other actions related to the investigation of surface or subsurface contamination;
- e. the taking of a response action that may include (i) the installation of fencing to prevent unauthorized entry onto the property, (ii) the construction of berms and the taking of other measures to temporarily or permanently confine and consolidate wastes disposed of on the property and to prevent releases of such wastes to the environment, and (iii) conducting any other response actions (as defined in CERCLA) as may be necessary at the property that are approved by EPA.

(2) to EPA and its authorized representatives having the authority to enter and freely move about all Property where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or MIMC and International Paper and their contractor; reviewing the progress of MIMC and International Paper in carrying out any work; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by MIMC and IPC. I realize that these actions by EPA will be undertaken pursuant to its response and enforcement responsibilities under CERCLA.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

---

Date

---

Signature

## CONSENT FOR ACCESS TO PROPERTY

Name: Holly Dawn McGinnes Boate

Location of Property: The property is located near the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"). Such property has been identified by the United States Environmental Protection Agency ("EPA") as part of the San Jacinto River Waste Pits Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," also referred to as Superfund), 42 U.S.C. § 9601 *et seq.*

Without admitting that I have any ownership in the Property, I consent as follows: (1) to officers, employees, contractors, oversight officials, and authorized representatives of EPA, McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company ("International Paper") (MIMC and International Paper are not representatives of EPA with respect to liability associated with activities at the Property) entering and having continued access to the Property for the following purposes:

- a. the taking of soil, water, and air samples as may be determined to be necessary;
- b. the sampling of any wastes disposed of on the property;
- c. the drilling of holes and installation of monitoring wells for subsurface investigation;
- d. other actions related to the investigation of surface or subsurface contamination;
- e. the taking of a response action that may include (i) the installation of fencing to prevent unauthorized entry onto the property, (ii) the construction of berms and the taking of other measures to temporarily or permanently confine and consolidate wastes disposed of on the property and to prevent releases of such wastes to the environment, and (iii) conducting any other response actions (as defined in CERCLA) as may be necessary at the property that are approved by EPA.

(2) to EPA and its authorized representatives having the authority to enter and freely move about all Property where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or MIMC and International Paper and their contractor; reviewing the progress of MIMC and International Paper in carrying out any work; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by MIMC and IPC. I realize that these actions by EPA will be undertaken pursuant to its response and enforcement responsibilities under CERCLA.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

---

Date

---

Signature

Austin\_1 588008v1 48434-1

**Nguyen, Ly**

---

**From:** Axe, Al  
**Sent:** Thursday, January 07, 2010 12:38 PM  
**To:** 'nann.barbara@epa.gov'  
**Cc:** 'Cermak, John F.'  
**Subject:** FW: Big Star Barge & Boat Co.Inc. Channelview Texas Property Access Agreement  
**Attachments:** 011.JPG; 014.JPG

Barbara,

Please see the attached email sent to you on Dec 14, 2009 regarding the access agreement we sent to Big Star. I have never received any comments from you on our proposed access agreement or Mr. Roberts' response, including his request that EPA sign the access agreement. If you have any comments, please send those to me or we can discuss this during our conference call tomorrow. Thanks. Al

**Albert R. Axe, Jr.**

Direct: (512) 370-2806

Fax: (512) 370-2850

profile link: <http://www.winstead.com/Attorneys/aaxe>

---

**From:** Axe, Al  
**Sent:** Monday, December 14, 2009 11:11 AM  
**To:** 'nann.barbara@epa.gov'  
**Cc:** 'Cermak, John F.'; Foringer, Jenn  
**Subject:** FW: Big Star Barge & Boat Co.Inc. Channelview Texas Property Access Agreement

Barbara,

Attached please find the response we have received from Jay Roberts, President of Big Star, regarding our proposed access agreement. Please let me know whether EPA is willing to sign an agreement as requested by Big Star. We will attempt to address Mr. Roberts' other two stated concerns. Thanks. Al

**Albert R. Axe, Jr.**

Direct: (512) 370-2806

Fax: (512) 370-2850

profile link: <http://www.winstead.com/Attorneys/aaxe>

---

**From:** RobMarSur@aol.com [mailto:RobMarSur@aol.com]  
**Sent:** Thursday, December 10, 2009 8:40 PM  
**To:** Axe, Al  
**Subject:** Big Star Barge & Boat Co.Inc. Channelview Texas Property Access Agreement

Mr. Axe

This Email will confirm our phone conversation of today regarding the above. I am in

1/7/2010

receipt of your CMRRR letter, with attachments, dated 12-7-2009.

As I stated on the phone I am not in a position to sign the 'Access Agreement' as submitted at this time due to the following, but not limited to, concerns:

- 1) Liability Coverage for ALL parties accessing the property.
- 2) Security of the property. For your clarification regarding the 'gates' please see attached photo 014 showing the "West" gate and photo 011 showing the "East" gate.
- 3) Agreement allowing the EPA to enter the property and no signature line on the agreement for said Agency.

The above listed 'concerns' are my own based on initial review of the 'Agreement' and I anticipate having our legal counsel review the original and all future revisions of the Agreement.

Will await your reply,

Jay W. Roberts  
Big Star Barge & Boat Co., Inc



